

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Federal-State Joint Board on
Universal Service

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CC Docket No. 96-45

PETITION FOR RECONSIDERATION,
OR ALTERNATIVELY,
WAIVER OF THE
COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS

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September 11, 1998

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SUMMARY OF PETITION

The Commission should reconsider portions of its Fifth Order in CC Docket 96-45, released June 22, 1998, or in the alternative, waive its 75-day filing window to allow the Commonwealth of the Northern Mariana Islands (Commonwealth) schools and libraries to receive funding under the Schools and Libraries program's first funding year. The Commonwealth requests expedited treatment of its petition because the SLC has stated that funding will likely begin to flow sometime in the next several weeks.

The Commission's Fifth Order changed the funding year cycle of the E-rate program (effective immediately) and revised the program's rules of priority under Section 54.507(g) of the Commission's Rules. The combined effect of these two rulings is to preclude even the most economically disadvantaged schools and libraries, such as those located in the Commonwealth, from receiving any funding whatsoever under the E-rate program until July 1999 in instances where the 75-day filing window was missed. Due to unique and extenuating circumstances, the Commonwealth schools and libraries failed to submit their FCC Form 471s within the 75-day filing window.

The APA requires an agency to provide adequate notice of what it proposes to accomplish in a rule making. Because the Commission did not give notice of its proposed rule changes concerning the rules of priority and change in funding year, those portions of the Fifth Order should be reconsidered. Moreover, because these rulings effectively preclude some of the most economically disadvantaged applicants in the Nation from receiving funding for an extended 18 month period in direct conflict with prior Commission policy, the Commission should reconsider its Fifth Order. The Commission has a clearly established policy of ensuring

that the most disadvantaged schools and libraries receive E-rate funding. Thus, to prevent the most disadvantaged applicants from being denied funding for over 18 months, the Commission should reconsider its ruling.

In the alternative, the Commission should waive the 75-day filing window deadline to permit the Commonwealth's schools and libraries to receive desperately-needed funding for supported services. In the Commonwealth's case, special circumstances exist, and a grant of the waiver request would clearly further the public interest.

Almost all of the students enrolled in the Commonwealth's public schools are eligible for reduced or free school lunches under the National School Lunch Program. As such, the Commonwealth's schools and libraries qualify for the highest available discounts under the Commission's discount matrix (i.e., 90%). The Commonwealth also suffers from an unemployment and poverty rate among local U.S. citizens of 14.2% and 35%, respectively; an average per capita income level which is among the lowest in the nation; an excessively low subscribership level; and high telecommunications costs. The fact that the Commission's rules operate, in practice, to deny arguably the most economically disadvantaged applicants funding for an extended time-period is plainly inconsistent with the Commission's objectives as well as the goals underlying Section 254 of the 1996 Act. Thus, a waiver of the filing window deadline is clearly in the public interest.

Further, numerous unique circumstances contributed to the Commonwealth's schools and libraries missing of the 75-day filing window deadline and warrant a wavier of the same. First, the Commonwealth's schools and libraries were unable to effectively access the SLC's website or to file their applications for funding electronically. Second, due to the Commonwealth's

distant geographic location, there were significant delays in delivery time in forwarding the Commonwealth schools' and libraries' 470 and 471 FCC Forms to the mainland U.S. Third, a change in administrations in the Commonwealth Government just prior to the filing deadlines left the Commonwealth's schools and libraries with little guidance as to how to complete the application forms and comply with the program's requirements. Lastly, the Commonwealth's severe financial crisis, caused by the depressed state of the Asian markets (as well as the inheritance of a \$33 million deficit from the prior administration), adversely affected its ability to dedicate human and financial resources to the E-rate application process. Clearly, it is unfair to deny funding to the Commonwealth's schools and libraries, thereby penalizing its children and library patrons, under these unique and extenuating circumstances. Therefore, good cause for a waiver of the 75-day filing window deadline exists.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of

Federal-State Joint Board on
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CC Docket No. 96-45

**PETITION FOR RECONSIDERATION,
OR ALTERNATIVELY,
WAIVER OF THE
COMMONWEALTH OF THE
NORTHERN MARIANA ISLANDS**

To: The Commission

The Commonwealth of the Northern Mariana Islands (Commonwealth), by its attorneys, and pursuant to Sections 1.3 and 1.106 of the Commission's Rules, 47 C.F.R. §§ 1.3, 1.106 (1997), respectfully requests that the Commission reconsider portions of its Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, released June 22, 1998,¹ or alternatively, waive the 75-day filing window deadline to allow the Commonwealth's schools and libraries to receive Universal Service funding under the Schools and Libraries program (E-rate program) during its first funding cycle.

The Commonwealth requests expedited processing of the instant petition because the Schools and Libraries Corporation (SLC) expects to begin distributing funds in accordance with

¹ In Re Federal-State Joint Board on Universal Service, Fifth Order on Reconsideration and Fourth Report and Order in CC Dkt. 96-45, FCC 98-120 (June 22, 1998)(Fifth Order). The Fifth Order was published in the Federal Register on August 12, 1998.

the new rules established in the Fifth Order within the next few weeks.²

I. INTRODUCTION

The Commonwealth consists of 14 islands located far from the mainland U.S. in the North Pacific Ocean. The Commonwealth's main island, Saipan, is approximately 100 miles northeast of the Territory of Guam, 1,200 miles southeast of Tokyo, and 3,300 miles west of Honolulu.³ The smallest of the U.S. insular areas, the Commonwealth has a total land area of 183.5 square miles.⁴ The populated islands of the Commonwealth (*i.e.*, Saipan, Tinian and Rota) have a total population of 59,913.⁵ All of the islands of the Commonwealth are considered "rural" under the Metropolitan Statistical Area (MSA) designation, adjusted by the Goldsmith Modification.⁶

The need for Universal Service funding support for the Commonwealth's schools and libraries cannot be exaggerated. Despite the Commonwealth having joined the North American Numbering Plan on July 1, 1997⁷ and being brought under the Commission's rate integration

² See What's New, SLC website at <<http://www.slcfund.org>>.

³ U.S. Department of Interior, Office of Insular Affairs, Report on the Islands, § 3.1 (1996)(Report on the Islands).

⁴ Id.

⁵ Id.

⁶ See In Re Federal-State Joint Board on Universal Service, Report and Order, 12 FCC Rcd 8776, ¶ 504 (1997)(appeal pending)(Report and Order); Federal Committee on Standard Metropolitan Statistical Areas, Statistical Reporter, 80(II), 335-384 (1980); and Harold F. Goldsmith, Improving the Operational Definition of Rural Areas for Federal Programs, Office of Rural Health Policy (1993).

⁷ See, *e.g.*, Letter from Ronald M. Conners, Bellcore Director of NANP Administration to Commonwealth Governor Froilan C. Tenorio (May 10, 1996).

policy effective August 1, 1997,⁸ the costs of telecommunications services in the Commonwealth remain among the highest in the nation.⁹

Moreover, according to statistics developed by the U.S. Department of the Interior, the average per capita income of the Commonwealth's citizens was a mere \$6,984 in 1995.¹⁰ This figure is significantly less than half of the average per capita income for persons within the mainland United States, which was \$16,555 for the same period.¹¹ According to a 1995 census, unemployment and poverty rates among local United States citizens in the Commonwealth were an astonishing 14.2% and 35%, respectively.¹² Moreover, according to the Commonwealth's calculations, approximately 100% of the students enrolled in the Commonwealth's public secondary schools are eligible to participate in the National School Lunch Program (NSLP).¹³

⁸ See In Re Policies and Rules Concerning the Interstate, Interexchange Marketplace, Implementation of Section 254(g) of the Communications Act of 1934, as amended, Report and Order, 11 FCC Rcd 9564, 9596 (1996), recon denied Memorandum Opinion and Order, 12 FCC Rcd 11481 (1997), and modified by First Memorandum Opinion and Order on Reconsideration, 12 FCC Rcd 11812 (1997)(appeal pending).

⁹ MTC currently carries calls between the Commonwealth's populated islands on a 1+ dialing basis and charges \$0.15 a minute for direct dialed calls. Saipan, the largest of the Commonwealth's islands, is only 2.27 miles north of Tinian and 73 miles north-northeast of Rota.

¹⁰ A Report on the Islands at Appendix A, Table 4.

¹¹ Id.

¹² Central Statistics Division/CNMI Department of Commerce (1996).

¹³ Both the Commonwealth schools and libraries filed discount calculation worksheets with their FCC Form 471s. See CNMI Public Schools, FCC Form 471, dated April 15, 1998; and Commonwealth Public Library, FCC Form 471, dated April 16, 1998. However, both calculations were faulty and only claimed discounts ranging between 50% and 80%. Due to this error, the Commonwealth schools and libraries plan to re-file corrected FCC Form 471s with

The result of high telecommunications costs and low per capita income is, not surprisingly, a low subscribership level.¹⁴ These facts demonstrate that many Commonwealth families have difficulty obtaining telephone service, let alone having internet access from their homes. Thus, access to telecommunications services and the internet in the Commonwealth's schools and libraries is critically important to the people of the Commonwealth.

Pursuant to Section 1.106(b)(1) of the Commission's Rules, 47 C.F.R. § 1.106(b)(1) (1997), the Commonwealth participated in the Commission's Universal Service proceedings in CC Docket 96-45,¹⁵ and as described below, its interests will be substantially and adversely affected the Commission's Fifth Order.

II. THE COMMISSION SHOULD RECONSIDER ITS FIFTH ORDER

Among other rulings, the Fifth Order changed the schools and libraries universal service support mechanism from a calendar year cycle to a fiscal year cycle, and revised the program's rules of priority under Section 54.507(g) of the Commission's Rules, 47 C.F.R. § 54.507(g) (1997). The combined effect of these two rulings is to prohibit even the most disadvantaged schools and libraries from receiving any funding under the E-rate program until July 1999 in

the Schools and Libraries Corporation (SLC) in the near future showing that they qualify for the maximum 90% discounts.

¹⁴ Report and Order at n.246 (stating that per capita income and telephone penetration rate in Commonwealth are among lowest in the nation). According to 1990 Census data, telephone subscribership in the Commonwealth is 66.8 percent. Id. at n.281. Such depressed figures lag far behind the average for the mainland United States, which approaches 95 percent. Id. at ¶ 112.

¹⁵ See e.g., Comments of the Commonwealth of the Northern Mariana Islands, CC Dkt. No. 96-45 (April 12, 1996);

instances where the 75-day filing window was missed.¹⁶ Despite the fact that the Commonwealth's schools and libraries are among the most economically disadvantaged in the Nation, and that they qualify for 90% discounts, the practical effect of the Fifth Order is to preclude the Commonwealth's schools and libraries from receiving any funding whatsoever until July 1999.

Because these rulings were adopted in violation of the Administrative Procedure Act (APA), and in violation of stated Commission policy, the Commission should reconsider those portions of its Fifth Order.

A. Adequate Notice and Opportunity for Comment Were Not Given

Section 553(b) of the APA requires that an agency provide adequate notice of what it proposes to accomplish in a rule making: "General notice of proposed rule making shall be published in the Federal Register....The notice shall include (1) a statement of the time, place, and nature of public rule making proceedings; (2) reference to the legal authority under which the rule is proposed; and (3) *either the terms or substance of the proposed rule or a description of the subjects and issues involved.*" 5 U.S.C. § 553(b) (1997)(emphasis added). The term "rule making" is defined as "agency process for formulating, *amending*, or repealing a rule." 5 U.S.C. § 551(5) (1997)(emphasis added). Section 553(b) requires the Commission to "make its views known to the public in a concrete and focused form so as to make criticism or

¹⁶ The Commonwealth's schools and libraries failed to submit their FCC Form 471s within the 75-day filing window. An explanation of the reasons why the Commonwealth missed the filing window is supplied infra at 13-15.

formulation of alternatives possible."¹⁷ The purpose of the notice requirement is to permit potentially affected members of the public to file meaningful comments.

In this case, there was no notice leading up to adoption of the Fifth Order's rule changes regarding the rules of priority or the immediate extension of the E-rate program's funding year. Had such notice been provided, the Commonwealth would have had the opportunity to formally express its concerns regarding the impact that such rule changes would have upon it. Because the Commission did not issue a notice requesting comment on these issues, these rulings contained in the Fifth Order should be set aside.

The Commission's reliance on comments received in response to its September 10, 1997 Public Notice to develop the record for its revised rules is misplaced.¹⁸ Although the Public Notice requested comment on very specific issues,¹⁹ it did not request comment on how funds should be distributed within a filing window, nor whether the funding year should be changed. In fact, the Commission acknowledged that "no party commented directly" on whether or not the Commission should modify the rules of priority.²⁰ Further, it appears that no comments

¹⁷ Home Box Office v. FCC, 567 F.2d 9, 36 (D.C. Cir. 1977); National Tour Brokers Ass'n v. United States, 591 F.2d 896, 899-900 (D.C. Cir. 1978).

¹⁸ Common Carrier Bureau Seeks Comment on Universal Service Support Distribution Options for Schools, Libraries, and Rural Health Care Providers, Public Notice in CC Dkt. No. 96-45, DA 97-1957 (Sept. 10, 1997)(Public Notice).

¹⁹ The Public Notice requested comment on: (1) whether a window period should be established; (2) whether to clarify that the rules of priority apply to the \$1 billion available between January 1, 1998 and June 30, 1998; (3) whether a mechanism to prioritize requests from rural health care providers should be adopted; and (4) whether other methods might ensure a broad and fair distribution of funds. Public Notice at 2. The Public Notice also requested comments regarding the allocation of aggregated requests for funds. Id.

²⁰ Fifth Order at ¶ 56.

were filed regarding a change of the E-rate program's funding year.²¹ The fact that comments fail to deal with the substance of a final rule is an indication that notice was inadequate.²²

Because the Commission did not give adequate notice to the public--including the Commonwealth--of its proposed rule changes regarding the immediate change in funding year cycle and the revised rules of priority, those portions of the Fifth Order should be reconsidered and the Commission's previous rules regarding the same should be reinstated.

B. Public Policy Compels the Commission to
Reconsider Rulings Contained in the Fifth Order

1. *Change in Funding Year*

Due to its devastating effect on disadvantaged schools and libraries which filed outside of the 75-day filing window, the Commission's decision to immediately change the E-rate program's funding year should be reconsidered. The Fifth Order changed the E-rate program's funding year cycle from January 1 - December 31 to June 30 - July 1,²³ effective immediately.²⁴ To implement the change, the Commission extended the program's first funding year by six months. The Commission's ruling, however, effectively prevents all applicants

²¹ The Commission does not cite to any comments in its discussion of adjusting the funding year for the E-rate program. Id. at ¶¶ 6-14.

²² See Mobile Oil Corp. v. FPC, 483 F.2d 1238, 1244 (D.C. Cir. 1973).

²³ Id. at ¶ 8.

²⁴ The Commission claimed the change was necessary to ameliorate the concerns of applicants which will be unable to complete construction projects by December 31, 1998. Id. at ¶ 9.

which did not meet the 75-day filing window from receiving E-rate funding until July 1999,²⁵ regardless of whether or not they are disadvantaged.

Such a result is in direct conflict with past Commission policy of providing funding to the most disadvantaged schools and libraries. The Commission has repeatedly sought to ensure that the most disadvantaged schools and libraries receive funding priority.²⁶ In fact, in its Fifth Order, the Commission stated that it "remain[s] dedicated to providing support in a manner that targets the most economically disadvantaged schools and libraries."²⁷

A reasonable alternative would be for the Commission to change the E-rate program's funding year at an appropriate later date. Such a delay would provide applicants with a clear warning to file their applications within the filing window and would enable applicants to prepare requests for services to cover an 18-month period, rather than a 12-month period.²⁸ Moreover, such a rule would not disadvantage other E-rate applicants.²⁹ Thus, the Commission should reconsider its immediate implementation of the change in the funding year cycle, and, instead,

²⁵ The Commission recognized this in its Fifth Order. Fifth Order at ¶ 34. The Commission justified this effect by stating that the benefit conferred by the ruling on approximately 30,000 applicants outweigh the hardship "for some applicants." Id. at ¶ 9. However, obviously not all 30,000 applicants will benefit from the immediate change in the funding year cycle. In fact, the Commission only cited to one such request in its Fifth Order. Id. at n.20 (citing to Santa Maria-Bonita School District, Request for Waiver (dated Feb. 11, 1998)).

²⁶ See e.g., Fifth Order at ¶¶ 35-38; and Report and Order at ¶ 539.

²⁷ Fifth Order at ¶ 18.

²⁸ The Fifth Order extended all applications for funding filed within the 75-day window for an extra 6 months, even though the requests for funding were designed to cover only a 12 month period. Id. at ¶ 8.

²⁹ Applicants which would benefit from an extension of the first year's funding cycle could petition the Commission for individual waivers.

delay the change until an appropriate later date.

2. *Change in Rules of Priority*

Because it denies funding to disadvantaged applicants which missed the 75-day filing window, the Commission should reconsider its revised rules of priority adopted in its Fifth Order.

Under the new rules, funding will be distributed to all applicants which met the 75-day filing window to support telecommunications services and internet access.³⁰ Any remaining funds would be allocated to requests for internal connections filed within the 75-day filing window, beginning with the most economically disadvantaged schools and libraries. Only if funds remain after all requests filed within the 75-day filing window are fully funded, will funding be distributed to applications filed outside of the funding window.³¹

The Commission stated that the new rules are intended to "further implement the Commission's prior decisions to allocate support for schools and libraries in a manner that provides higher levels of support for rural areas and areas with greater economic disadvantage, while recognizing that every eligible school and library should receive some assistance."³² However, application of the new rules do not effectuate this goal. In fact, applicants which filed outside of the 75-day filing window--such as the Commonwealth--will receive no funding whatsoever during the SLC's 1998/June 1999 funding year, even if they are among the most

³⁰ Fifth Order at ¶ 36. Such funding will be distributed to even those applicants which have less than 1% of their students eligible for the NSLP.

³¹ Due to the reduction in available funding during the first funding cycle, it is extremely unlikely that any funds will be distributed to applicants which filed outside of the 75-day funding window. The Commission recognized this in the Fifth Order. Id. at ¶ 34.

³² Id. at ¶ 35.

economically disadvantaged (qualifying for 90% discounts).

The Commission should reconsider its revised rules of priority, and, instead, adopt new rules which provide funding for economically disadvantaged schools and libraries even if applications are filed outside of the 75-day filing window. Such rules could require the SLC to provide funding for telecommunications services and internet access to all economically disadvantaged applicants, regardless of whether or not the filing window was met. In this manner, economically disadvantaged applicants--such as the Commonwealth's schools and libraries--would at least qualify for some funding even though the filing window was missed. Such a ruling would be consistent with the Commission's policies to ensure funding is available to the most economically disadvantaged applicants.

Thus, to prevent the most economically disadvantaged applicants from being denied funding for an extended duration of 18 months, the Commission should reconsider its ruling and provide support for telecommunications services and internet access for all economically disadvantaged applicants, regardless of whether or not they met the 75-day filing window.

III. IN THE ALTERNATIVE, THE COMMISSION SHOULD WAIVE THE 75-DAY FILING WINDOW DEADLINE TO ALLOW THE COMMONWEALTH'S SCHOOLS AND LIBRARIES TO RECEIVE DESPERATELY-NEEDED SUPPORT FOR THE CURRENT FUNDING YEAR

The Commission should waive the filing window deadline to permit the Commonwealth's schools and libraries to receive desperately-needed funding for supported services. Section 1.3 of the Commission's Rules allows the Commission to waive any provision of its rules upon a

showing of "good cause."³³ Good cause exists where the petitioner demonstrates that its special circumstances warrant deviation from the general rule and that a waiver is in the public interest.³⁴ As demonstrated below, special circumstances exist and a grant of the instant waiver request would clearly further the public interest.

A. A Waiver is in the Public Interest

In the Commonwealth's case, a waiver of the filing window deadline furthers the public interest. Section 254(h)(1)(B) of the Telecommunications Act of 1996 (1996 Act), 47 U.S.C. § 254(h)(1)(B), required the Commission to establish discounts for schools which are appropriate and necessary to ensure "affordable access" to telecommunications services. In implementing this requirement, the Commission adopted a percentage discount mechanism, adjusted for schools and libraries that are economically disadvantaged and located in areas facing particularly high prices for telecommunications services.³⁵ The discount matrix adopted by the Commission actually provides higher discounts for schools and libraries located in economically disadvantaged or high cost areas.³⁶ Further, consistent with the intent of Section 254 of the 1996 Act, the Commission has repeatedly sought to ensure that the most economically disadvantaged schools receive funding priority.³⁷

³³ 47 C.F.R. § 1.3 (1997).

³⁴ See Northeast Cellular v. FCC, 897 F.2d 1164 (D.C. Cir. 1990); and WAIT Radio v. FCC, 418 F.2d 1153 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972).

³⁵ Report and Order at ¶ 492.

³⁶ Id. at ¶ 520.

³⁷ Fifth Order at ¶¶ 35-38; Report and Order at ¶ 539; and 47 C.F.R. § 54.507(g) (1997).

In fact, the Commission recently stated that it "remain[s] dedicated to providing support in a manner that targets the most economically disadvantaged schools and libraries."³⁸ The Commission also stated that it intended "to ensure further that schools and libraries with the greatest level of economic disadvantage will have priority for support and will receive the level of support [previously] established...."³⁹ The Commission even adopted new rules of priority to ensure that "support is directed toward the most economically disadvantaged schools and libraries, as well as toward those located in rural areas."⁴⁰

Virtually all of the students enrolled in the Commonwealth's public schools are eligible for reduced or free school lunches under the NSLP.⁴¹ As such, under the Commission's discount matrix, all schools and libraries in the Commonwealth are eligible for maximum 90% discounts for supported services under the Schools and Libraries program.⁴² As explained supra at 2-4, however, the Commonwealth's state of economic disadvantage goes beyond simply qualifying for the maximum discount levels under the discount matrix. The Commonwealth suffers from an unemployment and poverty rate among local U.S. citizens of 14.2% and 35%, respectively;⁴³ an average per capita income level which is among the lowest in the nation;⁴⁴

³⁸ Fifth Order at ¶ 18.

³⁹ Id., at ¶ 4.

⁴⁰ Id. at ¶ 34.

⁴¹ See supra at n.13.

⁴² Report and Order at ¶ 520.

⁴³ Supra at n.12.

⁴⁴ Supra at n.10.

an excessively low subscribership level;⁴⁵ and high telecommunications costs.⁴⁶ Combined with the fact that the Commonwealth's schools and libraries qualify for the maximum discount level, these factors clearly demonstrate a compelling need for E-rate funding to the Commonwealth's schools and libraries. That the Commission's rules operate, in practice, to deny arguably the most economically disadvantaged applicants funding for supported services for an extended time-period is plainly inconsistent with the Commission's own stated objectives as well as the goals underlying Section 254 of the 1996 Act. Thus, a grant of the instant waiver request is clearly in the public interest.

B. Special Circumstances Warrant a Waiver

Numerous unique factors contributed to the Commonwealth's schools and libraries having missed the 75-day filing window deadline and warrant a waiver of the same.

The Commonwealth's schools and libraries were unable to file their FCC Form 470s electronically. It was extremely difficult for the Commonwealth schools and libraries to access the SLC's website, and virtually impossible between mid-February and mid-March 1998 (just prior to the deadline for filing FCC Form 470s with the SLC to meet the 75-day filing window). The Commonwealth even reported the problem to the SLC in February 1998.⁴⁷ The inability of the Commonwealth's schools and libraries to effectively utilize the SLC's website or file their

⁴⁵ Supra at 4 and n.14.

⁴⁶ Supra at n.9.

⁴⁷ See E-mail from Elizabeth Holowinski to SLC Customer Service, dated February 10, 1998, attached as Exhibit A. The SLC responded by only stating that "[t]he website has been enhanced and should be moving much quicker now than it has in the past. I suggest you do it in off hours if you want it to perform faster." See E-mail from SLC Service Bureau to Elizabeth Holowinski, dated February 10, 1998. The schools and libraries, however, could not access the SLC's website until after the passing of the filing window deadline.

FCC Form 470s electronically significantly contributed to their missing the 75-day filing window deadline.

Further, delays in delivery time from the Commonwealth to the U.S. mainland also contributed to the missing of the 75-day filing window deadline by the Commonwealth's schools and libraries. Due to Commonwealth's distant geographic location,⁴⁸ delivery times are prolonged significantly compared to express delivery services available on the mainland. This is demonstrated by the fact that the Commonwealth libraries' executed their FCC Form 470 on March 6, 1998, but the application was not posted on the SLC's website until March 18, 1998, over 12 days later.⁴⁹ The Commonwealth schools had a similar lag time of 13 days between when their FCC Form 470s were executed and when their application was posted on the SLC's website.⁵⁰

Moreover, a change in administrations in the Commonwealth Government also contributed to the missing of the filing window deadline. Public officials familiar with the Commission's Universal Service proceedings were no longer employed by the Commonwealth

⁴⁸ For example, the Commonwealth's largest island, Saipan, is located some 7,800 miles from Washington, D.C.

⁴⁹ See Commonwealth Public Library, FCC Form 470, dated March 6, 1998, posted at <<http://www.slcfund.org/forms/search.asp>>. Due to this delay, the Commonwealth Public Library marginally missed the 75-day filing window deadline. The libraries FCC Form 471 was executed and forwarded to the SLC on April 16, 1998 by overnight mail--*only one day after the close of the 75-day filing window*. If the Commission is unwilling to waive the filing window deadlines for both the Commonwealth's schools and libraries, the Commission should, at a minimum, waive the 75-day filing window for the Commonwealth Public Library's application for funding.

⁵⁰ CNMI Public Schools/Saipan Public Schools, FCC Form 470, dated March 17, 1998. CNMI Public Schools/Rota Public School, FCC Form 470, dated March 17, 1998. CNMI Public Schools/Tinian Public Schools, FCC Form 470, dated March 17, 1998. See also CNMI Public Schools, FCC Form 470, dated April 14, 1998.

after the inauguration of the new Governor in January 1998. This left the Commonwealth's schools and libraries with little guidance as to how to complete the application forms and comply with the program's requirements. In fact, the post of Special Assistant to the Governor for Telecommunications and Utilities was not filled until June 8, 1998. This lack of guidance was further compounded by the fact that the SLC help line was not accessible from the Commonwealth.⁵¹

Finally, since the end of last year the Commonwealth has experienced, and continues to experience, a severe fiscal crisis due to the depressed state of the Asian markets, adversely affecting its ability to dedicate human and financial resources to the E-rate application process. The tourism-led island economy of the Commonwealth, which is dependant on Asian markets, has experienced a sharp drop in visitor arrivals and business investment, resulting in a critical shortfall of revenues available to the Commonwealth government.⁵² Further, the current Administration inherited a \$33 million deficit from its predecessor.⁵³ The financial crisis--which is only now beginning to markedly impact the overall U.S. economy--has consumed the new administration's limited resources, particularly during the first three months after the new

⁵¹ As of May 5, 1998, calls to the SLC's help line at (888) 203-8100 could not be completed by Commonwealth residents. The Commission is aware that not all companies choose to include the Commonwealth in their 800 service area. See Report and Order at ¶ 419; Emergency Petition for Relief of the Commonwealth of the Northern Mariana Islands at 4-5; and In Re Federal-State Joint Board on Universal Service Requests for Extension of 880/881 Transitional Dialing Plan by the Commonwealth of the Northern Mariana Islands and the Territory of Guam, Order in CC Dkt. No. 96-45, DA 98-1299 (June 30, 1998).

⁵² See Cookie B. Micaller, "Frugality: A must-learn virtue during hard times," 8 Saipan Tribute 72 (April 14, 1998); and Cookie B. Micaller, "Teno imposes indefinite austerity measures," 8 Saipan Tribute 98 (May 20, 1998), attached as Exhibit B.

⁵³ Id.

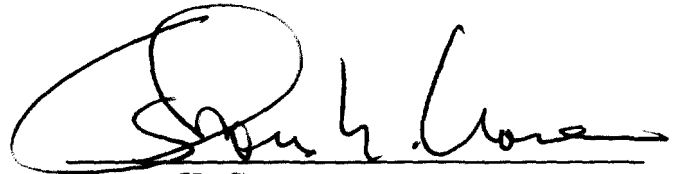
Governor took office in January, and has curtailed the government's ability to retain legal and other outside professional assistance regarding the E-rate's application process.

Taken together, these circumstances effectively precluded the Commonwealth during the critical first quarter of 1998 from gaining access to needed information regarding the application/funding process, understanding such information, and ultimately meeting the 75-day filing window. Therefore, good cause exists to justify a waiver of the filing window deadline to allow the Commonwealth's schools and libraries to receive desperately-needed E-rate funding for supported services.

IV. CONCLUSION

As demonstrated above, the Commission should reconsider portions of its Fifth Order, or in the alternative, waive its 75-day filing window deadline to allow the Commonwealth schools and libraries to receive funding under the School and Libraries program's first funding year. Expedited treatment of the instant petition is requested because the SLC has stated that funding will likely begin to flow sometime within the next few weeks.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Thomas K. Crowe", written over a horizontal line.

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COUNSEL FOR THE COMMONWEALTH
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September 11, 1998

EXHIBIT A

LAW OFFICES OF THOMAS K. CROWE, P.C.

February 10, 1998

Dear Sir or Madam:

Our client, the Commonwealth of the Northern Mariana Islands, is apparently having difficulties accessing the SLC's on-line application site. Apparently the SLC's website is running extremely slow. This concerns us because the 75-day application window has already begun and we would like to ensure that the Commonwealth's applications are filed without undue delays.

Could you please look into this problem and let us know when you expect the website to be fixed.

Thank you in advance for your assistance.

Sincerely,

Elizabeth Holowinski

EXHIBIT B